IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION NO : 24052 of 2000

Between:

1. A.V.S.N. Raju, s/o A. Satyanarayana Raju,
Retired Superintending Engineer, r/o Flat No.B-2,
Srilekha Apartments, Datlavari Street, Kakinada, East Godavari District.

2. Paturi Satyanarayana Murthy, s/o Rama Rao,
Retired Assistant Divisional Engineer,
r/o Unguturu village and Mandal, West Godavari District.

..... PETITIONERS

AND

1. Transmission Corporation of A.P. Limited,
represented by its Chairman and Managing Director,
Vidyut Soudha, Hyderabad.

2. A.P. Power Generation Corporation,
represented by its Chairman and Managing Director,
Vidyut Soudha, Hyderabad. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ declaring that the action of the respondents in not applying the principle contained in B.P.Ms.No.90 dated 24-06-1998 and G.O.Ms.No.87 dated 25-05-1998 to the petitioners while computing the pension of the petitioners, is arbitrary and discriminatory and direct the respondents to refix the pensionary benefits of the petitioners by taking the last pay drawn as emoluments for computation of pensionary benefits or in the alternative compute the pensionary benefits by giving service weightage increments as per B.P.Ms.No.256 dated 05-01-1999 and pay the arrears of pensionary benefits to the petitioners.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondents: MR. S. RAVINDRANATH, S.C for AP TRANSCO

The Court made the following:

ORDER:

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

The petitioners filed this writ petition seeking writ of Mandamus declaring the action of the respondents in not applying the principle contained in B.P.Ms.No.90 dated 24-06-1998, in which the orders of the Government issued in G.O.Ms.No.87 dated 25-05-1998 are affecting in respect of the Board employees including the petitioners while computing the pension of the petitioners as illegal, arbitrary and discriminatory and to direct the respondents to refix the pensionary benefits of the petitioners by taking the last drawn pay as emoluments for computation of pensionary benefits .

The first petitioner was retired from service while working as Superintending Engineer Operation Circle, Eluru, West Godavari District on 30-04-1998 on attaining the age of superannuation, and the second petitioner was retired from service while working as Assistant Divisional Engineer, Kothagudem, Thermal Power Station, on 30-04-1998 on attaining the age of superannuation. Thus both of them were retired on attaining the age of superannuation with effect from 30-04-1998.

The only short question that arises for consideration in this writ petition is, as to whether the petitioners are entitled for computation of their pensionary benefits in accordance with G.O.Ms.No.87 Finance and Planning Department dated 25-05-1998 issued by the State of Andhra Pradesh which was adopted by the respondents as per B.P.Ms.No.90 dated 24-06-1998. It is stated that the Transmission Corporation has adopted the orders issued in G.O.Ms.No.87 dated 25-05-1998 in respect of the Board employees and orders will come into force on the date of issuance of the said G.O.

The learned counsel appearing for the respondents submit that petitioners are not entitled for the benefits of G.O.Ms.No.87 dated
25-05-1998 as they were retired from service on 30-04-1998 before issuance of the said G.O. on 25.5.1998 and the said G.O. has no retrospective effect, therefore, the

petitioners are not entitled to the benefits of the said G.O. for fixing the pensionary benefits by taking the last drawn pay drawn as emoluments for computation of the pensionary benefits.

On the other hand, the learned counsel appearing for the petitioners submits that the issue raised in this writ petition squarely covered by the Order of this Court in W.P.No.16719 and 18490 of 2003 dated 23-12-2003. In the said writ petitions, A.P. Pensioners Samaj, and Association registered societies filed O.A.Nos.6030 of 1999 and O.A.No.329 of 2000 on the file of the A.P. Administrative Tribunal and both the O.As. were allowed by the Tribunal on 03-01-2002 holding that the pensioners are entitled for re-fixation of their pension in terms of G.O.Ms.No.87 dated 25.5.1998, they are not eligible for any arrears that accrued prior to 25.5.1998. Aggrieved by which, the State Government filed the said writ petitions on the file of this Court contending that the G.O. in question has no retrospective effect and the employees who have been retired on or after 25-05-1998 are only entitled for the pensionary benefits as per the said G.O., but the employees who retired prior to issuance of the said G.O. are not entitled for the benefits of the said G.O. It is not in dispute that the respondent-Corporation adopted the principles laid down in G.O.Ms.No.87 and also the Revised Pension Rules, 1980 for the employees of the Corporation. That being so, the Respondent-Corporation employees are entitled to the benefits on par with the State Government employees who were given benefits under the said G.O. Based on the elaborate arguments and several judgments of the Supreme Court, the Division Bench held in paragraph 9 as follows:

> “Therefore, the pensioners who retired prior to 25.5.1998 and after 25.5.1998 from a homogeneous group and they cannot be made as a heterogeneous group as observed by the Supreme Court in D.S.Nakara’s case (5 supra). The right to receive pension is a continuing right. If any revision of the scheme takes place, the said revision accrues to the pensioner from the date of the order, but it cannot be said that the revised scheme has bifurcated the pensioners into two categories, i.e., pre-revised pensioners and post-revised pensioners. The only effect is that the continuing rights of the petitioners get revised as per the modified scheme. Thus, the principle is that the pensioners forming homogeneous group by themselves cannot be bifurcated consequent on the issuance of G.O.Ms.No.87, dated 25.5.1998 and such discrimination attracts the wrath of Article 14 of the Constitution of India. The decisions relied on by the learned Additional Advocate General are not applicable to the facts of these cases as in those cases a fresh date was introduced with reference to the revised pay scales and in some cases a specific cut-off date has

> been brought into effect, but in the cases on hand though the scheme as such is continued, the only mode of calculation is instead of calculating the pension on the basis of ten months average pay it was changed to last drawn pay".

The Division Bench further held in paragraph 12 of the said judgment as follows—

> "Therefore, it is clear that the pensioners who are already drawing the pensions cannot be denied the revision of pension on the basis of the revised formula. It cannot be said that it is a new scheme introduced for the first time. Thus, the order passed by the Tribunal cannot be said to suffer from any infirmity nor can it be said that it is contrary to the decisions of the Supreme Court on this aspect and the Tribunal has made it clear in clear and unequivocal terms that it will apply only from 25.5.1998 and that the pensioners cannot claim any arrears from the anterior date of the above G.O. Thus, we do not find any illegality or irregularity in the order of the Tribunal".

Having regard to the facts and circumstances of the case, I hold that the principle adopted in the above case, would apply to the present case also. Following the aforesaid judgment, the respondents are directed to fix the pensionary benefits of the petitioners in accordance with the principles laid down in G.O.Ms.No.87 dated 25-05-1998, which was adopted by the respondents by their order in B.P.Ms.No.90 dated

24-06-1998 and pay the pensionary benefits to the petitioners. The respondents shall complete the exercise of re-fixing the pensionary benefits within a period of two months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs.

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V.ESWARAIAH, J

Date: 13.8.2004

Note: Issue C.C by One week.

B/o

GLV/DA

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday the Thirteenth day of August Two thousand and Four.

ASSISTANT REGISTRAR

Copy to

1. The Chairman and Managing Director,
Transmission Corporation of A.P. Limited,
Vidyut Soudha, Hyderabad.

2. The Chairman and Managing Director,
A.P. Power Generation Corporation,
Vidyut Soudha, Hyderabad.

3. Two C.D copies.